

TREMCO ILLBRUCK LIMITED CONDITIONS OF SALE

1.0 DEFINITIONS

- 1.1 Business Day Means a day other than Saturday or Sunday on which Banks are open for ordinary banking business in London
- 1.2 Buyer Means the person who buys or agrees to buy the Goods from the Seller.
- 1.3 Conditions Means the Terms and Conditions of Sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.4 Contract of Sale Means The Contract of Sale of The Goods consisting solely of The Order Acknowledgement, these Conditions of Sale and The Buyers' purchase order. In the event of any conflict between the said documents they shall take precedence in the order in which they are listed above.
- 1.5 Consumer Means a person defined in the Unfair Contract Terms Act 1977, Section 12 purchasing the Goods.
- 1.6 Delivery date(s) Means the date(s) specified by the Seller on the Order Acknowledgement stating when the Goods are to be delivered to the Buyer.
- 1.7 Goods Means the goods that the Buyer agrees to buy from the Seller set out in the Order Acknowledgement.
- 1.8 Price(s) Means the price of the Goods, which may include transport, packing and insurance (but excluding VAT) as set out in the Order Acknowledgement, including any fluctuation in price advised by the Seller to the Buyer up to the completion of delivery of the Goods.
- 1.9 Order Acknowledgment Means the document setting out, amongst other things, the Goods, the Quantity of Goods, the Price and, if different to 3.0 of these conditions, the Payment Terms that are agreed between the Parties, subject to these Conditions of Sale.
- 1.10 Seller Means Tremco illbruck Limited.
- 1.11 The Parties Means the Buyer and the Seller.

2.0 CONDITIONS APPLICABLE

- 2.1 These Conditions shall apply to all Contracts for the Sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order or confirmation order or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions. Each Contract shall be concluded on the date that the Seller deposits in the post with pre-paid postage or transmits by facsimile, e-mail or hands to the Buyer or his representative the Order Acknowledgment signed by the Seller whichever may be the earliest to occur.
- 2.3 In the event that no order has come into existence acceptance of delivery of the Goods by the Buyer shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation of the Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.5 In the event of any conflict between the content and interpretation of these Conditions of Sale and the Order Acknowledgment then the Order Acknowledgment will take precedence except in respect of Clause 6.3 of the Conditions of Sale, which is applicable to all Delivery Dates given by the Seller.
- 2.6 Any typographical, clerical or other error or omission in the Order Acknowledgment or any other document issued by the Seller shall be subject to the Seller's correction without any liability on behalf of the Seller.
- 2.7(a) In the absence of particular wording on any drawings/information supplied by the Buyer for the Seller's use in the manufacture/supply of the Goods the Seller will be entitled to assume all dimensions given are accurate and meet the relevant RIBA or British Standard approved scale.
- 2.7(b) The Sellers proprietary Goods will be manufactured and supplied to the Seller's specifications, dimensions, tolerances, finishes and quality stipulated in the Seller's Technical Literature and/or specific Order Acknowledgment current at the date of manufacture of the Goods.
- 2.8 Exact colour match for Goods supplied is not guaranteed.
- 2.9 The Goods supplied by the Seller must be stored, protected and maintained by the Buyer strictly in accordance with the Manufacturers instructions and used within any period of shelf life advised and where no such instructions/advice are supplied with the Goods, the Buyer must seek same from the Seller to ensure satisfactory storage, protection, maintenance and use of the Goods. The Buyer's failure to store, protect, maintain and use the goods as recommended by the Manufacturer/Seller will invalidate any claim in respect of any damage to the Goods arising from such failure.
- Subject to Clause 5:
- 2.10(a) Where the Goods are manufactured by the Seller the Seller's sole liability for the Goods is limited to the replacement value of the Goods;
- (b) Where the Goods are manufactured by someone other than the Seller then the Seller's sole liability for the Goods is limited to that liability which the Manufacturer or Supplier has to the Seller.
- 2.11(a) In the event that delivery of the Goods is delayed by the Buyer, for whatever reason, after the Goods or any part thereof have been manufactured then the Buyer will pay the full value of the Goods manufactured and any associated storage charges for the goods whilst stored as notified by the Seller to the Buyer. Payment in accordance with Clause 3.0 of these Conditions of Sale shall apply.
- 2.11(b) If delivery of the Goods is delayed, for whatever reason by the Buyer after the Goods or any part thereof have been manufactured then, notwithstanding payment by the Buyer, if the Seller agrees to store the Goods they will be immediately available for inspection by the Buyer and the provisions of Clause 6.4 shall be deemed to apply from the time at which storage commences so that any deterioration during storage shall be at the sole risk of the Buyer.
- 2.12 Without prejudice to its rights and without incurring any obligation The Seller will endeavour to accommodate amendments made by the Buyer to the information detailed in the Order Acknowledgement provided that it is notified in writing by the Buyer, at least five Business Days prior to the commencement of manufacture of Goods. Any revised Delivery Date arising from reason of such an accommodation will be notified to the Buyer but the Seller shall not incur any liability whatsoever for delay in delivery thereby arising. The Buyer agrees to reimburse the Seller for all costs and expenses whatsoever arising by reason of the said amendments and payment shall be made in accordance with Clause 3.0 of these Conditions of Sale.

3.0 PAYMENT

- 3.1 Prices set out in any quotation issued by the Seller and/or the Order Acknowledgment are subject to fluctuation. The Seller reserves the right to vary the price of the Goods at any time until delivery is completed and the Buyer agrees to pay any variation in the Price, together with VAT, if such variation is due to factors occurring after the making of the Contract, which are beyond the reasonable control of the Seller (including, without limitation, any change in specification of the Goods, scarcity of supply, monetary exchange rates, taxes, duties, the cost of labour and/or materials and any other manufacturing costs incurred by the Seller).
- 3.2 Payment of the Price together with VAT shall be paid within 30 days net monthly of the Sellers Invoice. Time for payment of the said invoice shall be of the essence to the contract.
- 3.3 The Seller shall not be bound to deliver the Goods until the Buyer has paid for them.
- 3.4 If the Buyer fails to make payment within 30 days net monthly of the Seller's Invoice then without prejudice to any of the Seller's other rights the Seller may then:-
- 3.4.1 Suspend or cancel deliveries of any Goods due to the Buyer; and/or
- 3.4.2 Appropriate any payments made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller may in its sole discretion think fit.
- 3.5 The Buyer may not set off against the Price (including any applicable VAT, transport, packing and insurance payable) any amount due from the Seller whether under the application contract of sale or otherwise.
- 3.6 The Seller shall be entitled to invoice the Buyer for the Price or any part thereof, together with any VAT applicable or for any additional costs or expenses incurred by The Seller in its performance of the Contract of Sale at any time after the Order Acknowledgment(s) have been delivered to the Buyer and whether or not the Goods or any part thereof have been delivered.
- 3.7 If the Buyer fails to make payment to the Seller in accordance with Clause 3.2 then the Seller shall be entitled to claim interest and compensation pursuant to the provisions of the Late Payment of Commercial Debts (Interest) Act 1998.

4.0 SALE BY DESCRIPTION

- 4.1 In the case of the Buyer not being a Consumer, the Seller reserves the right to supply the Goods with changes in the specification or description or sample provided. However, the Seller shall only change the sample, specification or description in a contract not involving a Consumer when such change is required because of a change by the Seller's supplier at any time or other factors outside of its reasonable control.

5.0 WARRANTIES AND LIABILITY

- 5.1 Except where the Buyer is dealing as a Consumer all warranties, conditions or terms relating to fitness for purpose or satisfactory quality where implied by statute or common law or otherwise are excluded.
- 5.2 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer for any loss direct or consequential of whatever nature resulting from any breach of duty of the Seller either at common law or under statute including any representations inducing the Buyer to enter into this contract.

6.0 DELIVERY OF THE GOODS

- 6.1 Delivery of the Goods shall take place at the address specified in the Order Acknowledgment. All unloading facilities required for delivery including labour and any special equipment shall be provided by the Buyer at its own expense.
- 6.2 Where the delivery of the Goods takes place at a place other than the Buyer's premises, the Buyer undertakes that the site will have:
- 6.2.1 Adequate safe access to all delivery vehicles and appropriate equipment necessary for off-loading.
- 6.2.2 A suitable hard standing surface for the purpose of safe off loading.
- 6.3 Whilst the Seller will endeavour to maintain delivery on the Delivery date, this date is only approximate and the time for delivery shall not be of the essence of the Contract for Sale. Where possible the Seller will advise the Buyer, giving 48 hours notice of anticipated Delivery Date(s). The Goods may be delivered in advance of the Delivery Date upon giving the Buyer reasonable prior notice.
- 6.4 The Buyer shall be deemed to have accepted the consignment of Goods, five Business Days after delivery and any signed Sellers delivery documents will be construed as irrevocable proof of Deliveries being in full accordance with the Delivery Documents. Except as provided herein, the Seller will have no further liability to the Buyer.
- 6.4.1 Complaints about whether the Goods delivered comply with the Contract of Sale as to quality must be made in writing within five Business Days after delivery, specifying the nature of the complaint(s). If the Seller agrees, in writing, that the Goods do not comply with the Contract of Sale and the Buyer rejects the Goods (or any part thereof), then the Buyer shall, as soon as is reasonably practicable, return the Goods to the Seller, who will, if practicable, supply replacements for the rejected Goods, as soon as is reasonably practicable following the Seller's receipt of the rejected Goods. Save as aforesaid, the Seller shall have no further liability to the Buyer.
- 6.4.2 Complaints about whether the quantity of Goods delivered comply with the Contract of Sale must be made within five Business Days of delivery. If the Seller agrees, in writing, to any deficiencies in quantities of Goods Delivered, the Seller will make good such deficiencies, as soon as practicably possible. Save as aforesaid, the Seller shall have no further liability to the Buyer.

7.0 TITLE AND RISK

- 7.1 The Goods shall be at the Buyer's risk as from delivery.
- 7.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until the Seller has either retained cash or cleared funds from the Buyer for:
- 7.2.1 The Price plus VAT, transport, packing and insurance as applicable in full; and
- 7.2.2 Any other sums whatever that shall be due from the Buyer to the Seller.
- 7.3 Until property in the goods passes to the Buyer in accordance with Clause 7.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.
- 7.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 7.5 The Seller shall be entitled to recover the Price plus VAT notwithstanding that property in any of the Goods has not passed from the Seller.
- 7.6 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under Clause 7.4 shall cease.
- 7.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods, which are the property of the Seller. Without prejudice to other rights of the Seller if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.
- 7.8 The Buyer shall insure and keep insured the Goods to the full price against all risks to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

8.0 REMEDIES OF THE BUYER

- 8.1 Where the Buyer rejects the Goods in accordance with Clause 6.4.1 then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods that conform to the Contract of Sale.
- 8.2 Where the Buyer accepts or is deemed to have accepted the Goods then the Seller shall except as provided herein have no liability whatever to the Buyer in respect of the Goods.
- 8.3 Where any Goods supplied by the Seller are not in compliance with the Contract of Sale whether in description, quality or quantity (subject to the provisions of these 'Conditions of Sale') and the Seller agrees to such non compliance, then the Seller's sole liability to the Buyer shall be limited to the repair or re-supply of such Goods (where practicable) at the Seller's sole discretion subject to the Seller's liability being established.

9.0 FORCE MAJEURE

- 9.1 The Seller shall not be liable for any failure to perform any contract for the sale of the Goods whether in whole or in part if this failure is caused by any inability to secure labour, materials or supplies or by any act of God, riot or civil commotion, strike, lock out, flood, drought, act of Government or any cause whatever outside of the Seller's direct control and either party shall have the right by giving notice in writing to the other to repudiate the contract.

10.0 INSOLVENCY OR DEFAULT OF THE BUYER

- 10.1 If the Buyer shall make default in or commit any breach of contract with the Seller or if any distress or execution shall be levied on the Buyer's property or assets or if the Buyer shall (in the case of an individual or partnership) make an arrangement for composition with his creditors, or be made bankrupt or make an application to Court for protection; or (in the case of a limited company) shall pass any resolution to wind up the company (other than for the purpose of solvent amalgamation or reconstruction) or shall be wound up by a creditor or make any application to the Court for relief against creditors or have a Receiver or Administrative Receiver appointed over the company's undertaking, property or assets then the Seller shall have the right forthwith by notice in writing to determine any contract then subsisting without prejudice to any claim or other right the Seller may have against the Buyer.

11.0 PROPER LAW OF CONTRACT

- 11.1 This contract is subject to the laws of England and Wales.
- 11.2 All disputes arising out of this Contract of Sale shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

12. MISCELLANEOUS

- 12.1 All headings are for ease of reference only and shall not affect the construction of this contract.
- 12.2 All references to the masculine shall include the feminine and neuter and vice versa and all references to the singular shall include the plural and vice versa.
- 12.3 Any notice required to be given under these Conditions shall be in writing addressed to the party at its registered office of principal place of business or such other address as may have been notified to the other party and shall be deemed to have been served in the case of post, two days after it has been delivered in the post with pre-paid first class postage or in the case of facsimile the date upon which it is sent provided it is transmitted before 4:00pm on a working day Monday to Friday, or in the case of personal delivery, the date, it is actually handed to the Buyer or his representative.
- 12.4 No waiver by the Seller of any breach of a term of this contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.5 No person who is not a party to this Contract shall have any right under the Contract (Right of Third Parties) Act 1999 to enforce any term of this Contract.
- 12.6 If it is found that any condition/conditions of this Contract of Sale is/are not legally enforceable then the unenforceable condition/conditions shall not in any way affect the applicability of the remaining conditions of this Contract of Sale.